

SUMMARY

In the Final Office Action dated February 13, 2008, claims 6 and 19 were rejected under 35 U.S.C. § 112, second paragraph, claims 1-6, 9, 11, and 13-20 were rejected under 35 U.S.C. § 102(b) as anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over *Schauer* (U.S. Patent No. 3,300,115). By this Preliminary Amendment, claims 1, 6, 9, 13, 18, and 19 will have been amended, claims 7-8, 10-12, and 20-59 will have been canceled, and claims 1-6, 9, and 13-19 will remain pending in this application.

REMARKS

Claim Rejections Under 35 U.S.C. § 112:

Claims 6 and 19 were rejected under 35 U.S.C. § 112, second paragraph, as providing insufficient antecedent basis for “the at least one flexible portion.” Claims 6 and 19 have been amended to address this rejection. Accordingly, Applicant requests removal of the rejection.

Claim Rejections Under 35 U.S.C. § 103:

Claims 1-6, 9, 11, and 13-20 were rejected under 35 U.S.C. § 102(b) as anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over *Schauer* (U.S. Patent No. 3,300,115). Applicant respectfully traverses this rejection.

Although *Schauer* is relied upon to disclose all elements of the claims, *Schauer* fails to teach or suggest each and every element of the claims as presented in the Amendment filed November 12, 2007. However, to advance prosecution, independent claims 1 and 13 have been amended to specify that the claimed carton includes:

a hinged flap adjacent the removable portion defined at least partially by a first cut and a second cut extending from the removable portion, the first cut having a first end proximate the removable portion and a second end distal the removable portion, the second cut having a first end proximate the removable portion and second end distal the removable portion, the second end of the first cut and the second end of the second cut intersected by respective lines that prevent the first cut and the second cut from extending beyond their intended length, wherein the hinged flap, when engaged, enlarges the opening to create an enlarged opening, the enlarged opening enabling easier container removal from the carton than the opening alone.

Schauer entirely fails to disclose such claim elements, since *Schauer* fails to teach or suggest, for example, (1) a hinged flap adjacent a removable portion, (2) a first cut and a second cut each having first and second ends with the second end being intersected by respective lines, (3) that the respective lines that intersect the second ends prevent the first cut and the second cut from extending beyond their intended length, or a (3) that the hinged flap enlarges the opening to create an enlarged opening that enables easier container removal from the carton than the opening alone. Accordingly, since *Schauer* fails to teach or suggest each and every element, rejections based thereupon should be withdrawn.

The dependent claims are allowable over *Schauer* on their own merits and, as inheriting the allowable characteristics of independent claims 1 and 13 from which they depend.

Since all pending claims are thought allowable by this Amendment Under 37 C.F.R. § 1.116, claims 58 and 59 have been canceled. Applicants reserve the right to continue prosecution of these claims in divisional or other continuing applications.

Actions In Related Applications:

Applicant directs the Examiner's attention to the following applications that may be of interest to prosecution of the present application:

- 11/533,492 Pending USPTO Continuation Application before Examiner Michael Collins - claims previously rejected under 35 U.S.C. § 102 as being anticipated by *Schauer* (US Patent No. 3,300,115), however, the claims have now been allowed
- 2004-527010 Pending Japanese Application before Examiner Kazuo Sekiya - claims rejected as unpatentable over Jpn. PCT National Publication No. 97-315375 (the Japanese equivalent application of Okamoto)
- 03784240.8 Pending European Application before Examiner Johann Fitterer - claims rejected as lacking inventive step over *Pawlowski et al.* (U.S. Patent No. 4,170,325) in one office action and then over *Chirchiglia* in another office action
- 2003255741 Pending Australian Application before Examiner A. ALI - claims rejected as lacking inventive step over either *Oliff* alone or over *Oliff* in combination with *Schauer*, WO 2002/014166, or *Chirchiglia*; the Australian action also cites as “highly relevant” the following two items: GB 2268159 and *LeDrew* (U.S. Patent No. 4,493,453)

Applicants believe that the present claims are not anticipated or rendered obvious by any known items, including the items cited in the above referenced related applications. For example, none of these references teach or suggest “a hinged flap adjacent the removable portion defined at least partially by a first cut and a second cut extending from the removable portion, the first cut having a first end proximate the removable portion and a second end distal the removable portion, the second cut having a first end proximate the removable portion and second end distal the removable portion, the second end of the first cut and the second end of the second cut intersected by respective lines that prevent the first cut and the second cut from extending beyond their intended length, wherein the hinged flap, when engaged, enlarges the opening to create an enlarged opening, the enlarged opening enabling easier container removal from the carton than the opening alone” as presently claimed.

Claims 1-6, 9, and 13-19 are thus allowable and Applicant requests an indication of such in the application.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted,

6/4/08
Date

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